Remarks:

Reconsideration of the application is respectfully requested.

Claims 63 - 139 are presently pending in the application. On page 2 of the above-identified Office Action, claims 63 and 101 were rejected for double-patenting under 35 U.S.C. § 101, as allegedly claiming the same invention as that of claims 1 and 4 of prior U. S. Patent No. 6,526,509 (the " '509 patent"). Claims 64 - 100 and 102 - 139 were rejected based on depending from the above rejected base claims. There was no suggestion in the Office Action of whether claims 64-100 and 102 - 139 were, themselves, subject to any double-patenting rejections, and if so, whether the dependent claims would be rejected based on statutory "101" type double patenting, or non-statutory obviousness-type double patenting.

Applicants respectfully traverse the above double-patenting rejection of claims.

As such, Applicants scheduled a telephonic interview with the Examiner. Applicants would like to thank Examiner Sherkat for the courtesy shown to Applicants' representative. During the Telephonic Examiner Interview of December 27, 2004, Applicants' representative pointed out what Applicants believe to be differences between the independent claims of the present application and claims 1 and 4 of the '509 patent.

The Examiner pointed to a limitation in claim 1 of the '509

patent that she thought to be the equivalent of that in the

Applicants' current independent claims. In the interview, the

Examiner expressed that Applicants should further amend the

claims and the amended claims would be considered, if

proposed, to determine whether the amended claims were

patentable, and whether they were subject to double patenting.

Applicants respectfully still disagree with the rejections and

maintain that the presently pending claims 63 and 101 are

patentably distinct from claims 1 and 4 of the '509 **patent**.

Applicants will set forth herebelow, in detail, some of the

differences between the pending claims and those of the '509

patent.

More particularly, Applicants' presently pending independent

claim 64 recites, among other limitations:

> " . . . a third input variable for the given hash
> function including, for forming the fourth input
> variable, **at least one variable that can be used to**
> **unambiguously infer the session key**, at least part of
> the at least one variable being a nonpublic variable;"
> [emphasis added by Applicants]

Similarly, Applicants' presently pending independent claim 101

recites, among other limitations:

> "a third input variable for the given hash function
> including, for forming the fourth input variable, **at**

> least one variable that can be used to <u>unambiguously</u>
> <u>infer</u> the session key," [emphasis added by Applicants]

During the telephonic interview, the Examiner pointed to a limitation in the '509 **patent**, that she alleged was the same as the above cited limitation contained in Applicants' pending claims. Applicant respectfully disagrees that any limitation in the claims of the '509 **patent** corresponds to, among others, the above cited limitation found in claims 63 and 101 of the instant application.

Among other limitations, Applicants' present claims recite and require, a third input variable **including at least one variable that can be used to <u>unambiguously infer</u> the session key**. According to the first entry of the Merriam-Webster Online Dictionary, the word **infer** means, **"to derive as a conclusion from facts or premises"**. The second entry for infer is **"guess, surmise"**.

Contrary to the claims of the present application, the claims of the '509 **patent** neither teach, nor suggest, that the third input variable includes at least one variable that can be used to <u>unambiguously</u> (i.e. clearly, precisely according to Merriam Webster) <u>infer</u> (i.e., guess or surmise) the session key. Rather, claims 1 and 4 of the '509 **patent** both recite, among other limitations:

"forming a fourth input variable in the first computer
unit using one of a second hash function or the first
hash function, **a third input variable for the first
hash function or for the second hash function** <u>having at
least the session code</u> **in order to form the fourth
input variable;**"

Dependent claims 2, 3 and 5 of the '509 **patent,** do nothing to

alter the interpretation of the **third input variable** of claims

1 and 4 of the '509 **patent.**

As such, in the claims of the '509 **patent,** the claimed fourth

input variable is formed using **a third input variable that** <u>**has**</u>

(i.e., is already in possession of) **the session code.** This is

completely contrary to Applicants' pending claims which forms

a fourth input variable using **a third input variable**

including, at least one variable <u>that can be used</u> to

<u>unambiguously infer</u> the session key.

Applicants respectfully disagree that "at least one variable

that can be used to <u>unambiguously infer the session key</u>", as

presently claimed, is the equivalent of "**a third input**

variable for the first hash function or for the second hash

function <u>having at least the session code</u>", found in the '509

patent. Clearly, including <u>**a third input variable having**</u> the

session key is different from <u>**a third input variable including**</u>

<u>**at least one variable that can be used to unambiguously infer**</u>

the session key. One of the third input variables (i.e., the

'509 patent) is in possession of the session key, the other

third input variable (i.e., Applicants' present claims), is in

possession of something **that can be used to infer** the session

key. The third input variable of the present claims is not

the same third input variable of the claims of the '509

patent.

Because the limitations of presently pending claim 63 and 101,

and the claims depending therefrom, are different from the

claims of the '509 **patent**, the invention of Applicants'

present claims 63 and 101 is a **different invention** than that

claimed in the '509 **patent, and the same invention is not**

claimed twice. See MPEP § 804. Per MPEP § 804, the test for

statutory double patenting is whether a claim in the

application could be literally infringed without literally

infringing a corresponding claim in the patent. As shown

above, claims 63 and 101 could clearly be literally infringed

by a system forming a fourth input variable from a third input

variable **including at least one variable that can be used to**

unambiguously infer the session key, but not having the

session key, while no claim of the '509 **patent** would be

literally infringed.

Further, claim 1 of the '509 **patent** is different from those

presently pending because it additionally recites, among other

limitations, "forming a response in the second computer unit by use of said session code" and "checking the session code in the first computer unit on the basis of the response", neither of which corresponds to a limitation in Applicants' present claims. Independent claim 4 of the '509 patent includes similar limitations to claim 1 of the '509 patent. Applying the test for statutory double patenting from MPEP § 804, again, it can be seen that claims 63 and 104 of the present application could be literally infringed without literally infringing claims 1 or of the '509 patent. Because the elements **forming** and **checking** limitations are present in the '509 patent claims, but not in the present claims, those claims represent different inventions and, therefore, are patentable over and in addition to, the claims of the '509 patent. It is clear that Applicants' presently pending claims, having fewer steps than claims 1 and 4 of the '509 patent, are inventive, different and distinct from the claims of the '509 patent.

In view of the foregoing, Applicants believe that the claims of the present application are substantively and patentably different from the claims of the '509 patent, and would be patentable over those claims. As such, Applicant respectfully requests that the statutory double patenting rejection be withdrawn.

Page 7 of 10

Further, the claims of the present application **are not obvious**
over the claims of the '509 **patent**. The claims of the '509
patent, neither teach, nor suggest, the inclusion in the third
input variable, of at least one variable that can be used to
unambiguously infer the session key. In fact, the claims of
the '509 **patent** specifically teach away from the inclusion of
such a variable, because they **already require the third input**
variable to already have the session key. As such, it would
be counter to any teaching or suggestion in the '509 **patent**
claims, to include with the session key, **at least one variable**
that can be used to unambiguously infer the session key.

It is accordingly believed that claims 63 and 101 are
patentably distinct from (i.e., neither anticipated by, nor
obvious in view of) the claims of the '509 **patent**. Claims 63
and 101 are, therefore, believed to be patentable. The
dependent claims are believed to be patentable as well because
they all are ultimately dependent on claims 63 and 101. As it
is believed that the claims were patentably distinct from the
'509 **patent** in their original form, the claims have not been
amended.

In view of the foregoing, reconsideration and allowance of
claims 63 - 139 are solicited.

In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.
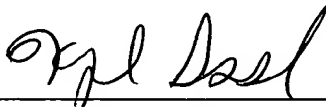
Additionally, please consider the present as a petition for a one month extension of time, and please provide a one month extension of time, to and including, January 14, 2005 to respond to the present Office Action.

The extension fee for response within a period of one (1) month pursuant to Section 1.136(a) in the amount of $120.00 in accordance with Section 1.17 is enclosed herewith.

Please provide any additional extensions of time that may be necessary and charge any other fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Lerner and Greenberg, P.A., No. 12-1099.

Respectfully submitted,

_____
For Applicants

Kerry P. Sisselman
Reg. No. 37,237

KPS:cgm

January 14, 2005

Lerner and Greenberg, P.A.
Post Office Box 2480
Hollywood, FL 33022-2480
Tel: (954) 925-1100
Fax: (954) 925-1101